

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DeAndre Christopher,)
)
 Appellant,)
 v.) **C.A. No.: N20A-02-003 FJJ**
)
UNEMPLOYMENT INSURANCE)
APPEAL BOARD)
)
 Appellee.)

ORDER

*Upon Consideration of the Appellant’s Appeal from the Decision of the Unemployment Insurance Appeal Board – The Board’s Decision is **AFFIRMED.***

This 28th day of October, 2020, having considered the Appellant’s Papers, the Record in this case, decisional and statutory law, it appears that:

1. Appellant DeAndre Christopher (“Cristopher”) appeals a decision of the Unemployment Insurance Appeal Board (“UIAB” or “Board”) finding that his employment with Legacy Foods, LLC (“Legacy Foods” or “Legacy”) was terminated for cause and that he is not entitled to unemployment insurance benefits.

2. Christopher was employed with Legacy Foods¹ as a receiver, stocker, and delivery driver from June of 2018 until his employment was terminated in August of 2019.² Legacy Foods claims that Christopher's employment was terminated for cause, and that he is therefore ineligible to receive unemployment benefits. Legacy claims that Christopher's employment was terminated due to attendance issues, tardiness, and other performance problems.³
3. After Christopher filed for unemployment benefits, a Claims Deputy found that Legacy had not proven that Christopher's employment had been terminated for cause, and that Christopher was therefore eligible to receive unemployment insurance on September 27, 2019. Legacy appealed this decision to an Appeals Referee. The Appeals Referee held a hearing on and issued a written opinion affirming the Claims Deputy's ruling on October 22, 2019. Legacy Foods appealed this decision again to the UIAB, which conducted a hearing on November 20, 2019. Bryan Higgins,

¹ The record appears to indicate that Christopher was originally hired for another company that had merged with Legacy Foods by the time of Christopher's termination. R. at 38-39. For purposes of clarity, this Order will refer to Christopher's employer as "Legacy Foods."

² R. at 13

³ R. at 16. Legacy Foods also indicated that Christopher had secondary issues with accidentally breaking products and occasional carelessness: ("Q: And then you're saying aside from attendance there were other issues . . . and there was some broken product? A: Breaking of products, not being very careful, things like that.")

Christopher's former supervisor at Legacy, provided testimony on behalf of Legacy at both live hearings. Christopher also provided testimony on his own behalf during both hearings.

4. The UIAB issued a decision reversing the Appeals Referee on January 31, 2020. The UIAB found that Legacy had issued Christopher multiple documents between May and August of 2019 noting Christopher's frequent tardiness and other performance-related issues.⁴ The UIAB also found that Legacy had placed Christopher on a three-month probation period starting in June of 2019, and that Christopher continued to violate company policies during his probation period.⁵ Based on this evidence, the Board concluded that Christopher had been terminated for just cause and that he was therefore disqualified from receiving unemployment benefits.
5. Christopher's appeal of the UIAB's decision is now before this Court. Christopher has filed a Notice of Appeal containing four grounds to overturn the Board's determination that he was terminated for just cause.⁶

He contends that:

⁴ R. at 96.

⁵ *Id.*

⁶ Christopher also failed to provide a brief or other legal memorandum along with his Notice of Appeal. On September 30, 2020, the Court sent Christopher a letter informing him that his appeal could be dismissed pursuant to Superior Court Rule 107(f) if he failed to take any further action in the case within twenty days. As of

- a. The Legacy Foods company policies which he allegedly violated were not in place at the time of his termination.
 - b. He was given an increase in pay prior to his termination.
 - c. He was granted a promotion prior to his termination.
 - d. He improved his work performance after he received initial warnings regarding tardiness and deficient performance.
6. Each of Christopher's grounds for appeal state factual claims and do not allege that the UIAB committed any errors of law. On appeal, this Court's review of the UIAB's factual findings is limited to determining whether the Board's decision was supported by substantial evidence.⁷ Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁸ In its appellate capacity, this Court views the facts in the light most favorable to the party which prevailed below. This Court does not weigh the evidence presented below, evaluate the credibility of witnesses, or make its own factual findings. Unless the UIAB has committed an error of law, this Court will affirm a decision of

October 21, 2020, Christopher has not submitted any additional materials to the Court.

⁷ *Bullock v. K-Mart*, 1995 WL 339025, at *2 (Del. Super. May 5, 1995).

⁸ *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981).

the UIAB as long as it is supported by substantial evidence and does not represent an abuse of the Board's discretion.⁹

7. Christopher's Notice of Appeal first states that "all of the policies that were referenced [in the UIAB's decision] were not in place at the time of the incidents [that led to his firing.]" However, the record contains testimony from Christopher's supervisor at Legacy Foods, Bryan Higgins, indicating that the company policies cited as the basis for Christopher's termination were in place prior to his firing.¹⁰ This led the Board to conclude that "the record reflects that [Christopher] was aware of the policies and that they were in place prior to [Christopher] being disciplined for any violations thereunder."¹¹ The record supports the Board's determination on this point.
8. Second, Christopher's Notice states that he was "given an increase in pay" prior to his termination. At the hearing before the Appeals Referee, Christopher testified that he did in fact receive an increase in pay shortly before his termination.¹² The fact that Christopher received a raise prior to

⁹ *Hoffecker v. Lexus of Wilmington*, 2012 WL 341714, at *1 (Del. Feb. 1, 2012).

¹⁰ R. at 80 ("HIGGINS: . . . So both buildings decided what policies to incorporate universally across their buildings. And as soon as the merger happened, we had these policies in place and signed. So these were well before the write-ups had occurred.")

¹¹ R. at 96.

¹² R. at 25 ("CHRISTOPHER: I actually got a raise [in] August. . . I don't think I'm going to give someone more money [if] they're still not following . . . [workplace] protocols.")

termination, however, does not mean that Legacy did not have just cause to terminate his employment. Christopher's consistent tardiness and other performance issues provided a sufficient basis for Legacy Foods to terminate his employment for just cause, notwithstanding the raise he received prior to his firing.

9. Next, Christopher's Notice states that he was "granted a new position" with Legacy prior to his termination. At the hearing before the Appeals Referee, Christopher indicated that he received his pay raise because he had received a new job title with Legacy.¹³ Higgins' testimony confirmed that this was in fact the case.¹⁴ Notwithstanding Christopher's new position, however, the record nevertheless contains sufficient evidence that Legacy terminated his employment due to consistent tardiness and performance issues.

10. Finally, Christopher's Notice states that he "improved [his] working performance" prior to being fired and that he therefore "didn't see . . . the reason [he] was being terminated." Christopher's testimony at the hearing before the Appeals Referee indicates that he improved his consistent

¹³ R. at 36. ("HIGGINS: . . . were you also given a position in receiving that warranted the raise? CHRISTOPHER: Yeah.")

¹⁴ R. at 37. ("APPEALS REFEREE: So you're saying that the raise was due to [Christopher] taking on another position? HIGGINS: Yes.")

tardiness after being given multiple written warnings.¹⁵ Christopher's tardiness resulted in Legacy placing him on a three-month probationary period scheduled to last from June to September of 2019. Christopher received and signed a document entitled Terms of Probation and Agreement, which indicated that he could be fired for any further violations of Legacy Foods policies during this probationary period. Christopher admitted in his testimony that he continued to have other performance issues during his probation period. For example, the day before his termination, Christopher took a Legacy Foods walkie-talkie with him on a personal break in which he left the Legacy facility.¹⁶ Christopher admitted that this was against company policy, and that his supervisors informed him that this violation was "the last straw . . . anything after this [will result in a firing.]"¹⁷ The record also indicates that this break violated multiple Legacy policies on breaks by warehouse personnel: Christopher took a 26-minute long break even though he was only allotted 15 minutes per break, and he neglected to write down the start and end times of his break on a company break log. The record contains a

¹⁵ R. at 27-28.

¹⁶ R. AT 28-29 ("APPEALS REFEREE: So you're not supposed to take . . . walkie-talkies with you? MR. CHRISTOPHER: [Yes]. That – that was my mess up.")

¹⁷ R. at 27.


written outline of Legacy's Warehouse Personnel Break Policy signed by Christopher, which indicates that Christopher violated these break policies.¹⁸ The record also contains a copy of Legacy's Walkie-Talkie Policy signed by Christopher, which indicates that walkie-talkies "must be kept in the office" at all times and cannot be removed from workplace premises.¹⁹ Christopher's decision to take a walkie-talkie with him while he left the Legacy warehouse on an extended personal break violated both of these policies and the terms of his probation. While Christopher's tardiness and attendance issues may have improved prior to his firing, the record nevertheless contains substantial evidence that he violated the terms of his probation and continued to experience other performance issues sufficient to constitute just cause for his termination.

11. In sum, a review of the factual record indicates that the UIAB's decision below is supported by substantial evidence. The grounds which Christopher has stated in his Notice of Appeal are not sufficient for this Court to overturn the UIAB's decision.

¹⁸ R. at 34, 60.

¹⁹ R. at 63.

NOW, THEREFORE, in light of the evidence in the record justifying the UIAB's decision and the absence of any error of law, the decision of the UIAB is **AFFIRMED**.



FRANCIS J. JONES